

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

RICHARD M. FLEMING,)	4:10CV3217
)	
Petitioner,)	
)	
v.)	MEMORANDUM
)	AND ORDER
UNITED STATES OF AMERICA,)	
)	
Respondent.)	

Because the appeal is not taken in good faith, Dr. Fleming will be denied leave to appeal in forma pauperis. *See, e.g.* Fed. R. App. P. 24; 28 U.S.C. § 1915. My reasons for this conclusion are set forth below.

First, the appeal is frivolous because Dr. Fleming brings this § 2241 habeas action as an improper substitute for a § 2255 motion. Second, this appeal is frivolous because this § 2241 action is in reality a successive § 2255 motion and permission has not been granted by the Court of Appeals to file a successive § 2255 motion as required by 28 U.S.C. § 2255(h). Third, for the reasons articulated in the Memorandum and Order dismissing this case (filing no. 16 at CM/ECF pp. 11-16), there is no substantive basis for the ineffective assistance of counsel claims asserted by Dr. Fleming against Mr. Hansen. Fourth, the Affidavit (filing no. 23 at CM/ECF pp. 3-4) submitted by Dr. Fleming indicates that he has two unencumbered vehicles (a 2007 “Hummer” and a 1992 Chevy (probably a Corvette¹)) that together have a value, according to Fleming, that exceeds \$18,000 and thus it appears that Fleming is able to pay the required fees and costs.

IT IS THEREFORE ORDERED that:

¹I draw this inference from information submitted to me during the underlying criminal litigation.

1. The Motions to Proceed In Forma Pauperis (filing nos. 21 and 22) are denied.
2. The Clerk shall immediately notify the parties and the Court of Appeals of this decision by providing the parties and the Court of Appeals with a copy of this Memorandum and Order.
3. Dr. Fleming is advised that he has 30 days after service of the notice provided in paragraph 2 above to file a motion to proceed in forma pauperis directly with the Court of Appeals.

DATED this 10th day of January, 2011.

BY THE COURT:

Richard G. Kopf
United States District Judge